## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

PAUL LAWRENCE BRUNER, III,	)
Plaintiff,	)
1 1411111111,	)
v.	) No. CIV-23-16-R
UNITED STATES COURT OF	)
APPEALS FOR THE TENTH CIRCUIT,	)
Defendants.	)

Plaintiff filed this action on January 5, 2023, alleging the violation of his constitutional rights. (Doc. No. 1). Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) the matter was referred to United States Magistrate Gary M. Purcell (Doc. No. 4). On January 6, 2023, Judge Purcell ordered Plaintiff to cure certain deficiencies, specifically requiring that he either pay the filing fee or seek leave to proceed *in forma pauperis* by Jan 24, 2023. (Doc. No. 5). Plaintiff filed a motion (Doc. No. 6) and on Jan 20, 2023, Judge Purcell issued a Report and Recommendation wherein he recommended that the motion for leave to proceed *in forma pauperis* be denied in light of the balance in Plaintiff's institutional accounts. Thereafter Plaintiff submitted a letter to the Court (Doc. No. 8) and a second Motion for Leave to Proceed *in forma pauperis*. (Doc. No. 9). The attached statement of accounts, dated Feb 2, 2023, indicates a balance of \$612.19 in his prison accounts, which

ORDER

<sup>&</sup>lt;sup>1</sup> The letter was addressed to the Clerk of Court and indicated that Plaintiff had submitted a filing fee for one of his prior cases and therefore no longer had the requisite funds to cover the filing fee in this case. This Court, however, has received no filing fees in any of Plaintiff's cases.

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is sufficient to pay the \$402.00 filing fee. Accordingly, the Court hereby adopts the Report

and Recommendation, DENIES Plaintiff's Motions for Leave (Doc. Nos. 6 and 9). Plaintiff

shall submit the \$402.00 filing fee within fourteen days of entry of this Order. Failure to

do so will result in dismissal of this case without prejudice.<sup>2</sup>

Plaintiff also submitted a letter on March 13, 2023, asserting that Defendants in each

of his cases are in default. (Doc. No. 10). Because the issue of Plaintiff's filing fees has

not been resolved, none of the Defendants in any of his cases has been served with process.

Indeed, pursuant to the Court's Local Civil Rule 3.3(d), these cases are only conditionally

filed. None of the Defendants is obligated to respond to the litigation until such time as

ordered to do so by the Court per Local Civil Rule 9.2(c) and accordingly, his request for

the entry of default and the payment of money is DENIED.

**IT IS SO ORDERED** this 3<sup>rd</sup> day of May 2023.

DAVID L. RUSSELL

UNITED STATES DISTRICT JUDGE

<sup>&</sup>lt;sup>2</sup> In the event that Plaintiff tenders the \$402.00 in this case the Court will reconsider whether, given the adjustment to the balance of his accounts caused by this payment, he should be permitted leave to proceed *in forma pauperis* in his other case. *See* CIV-23-71-R.